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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Petition of)	
)	
Ohio Public Utilities Commission)	NSD File No. L-99-74
For Additional Delegated Authority to)	
Implement Number Conservation Measures)	
)	
)	
In the Matter of)	
)	
Implementation of the Local)	
Competition Provisions of the)	CC Docket No. 96-98
Telecommunications Act of 1996)	
)	
Number Resource Optimization)	CC Docket No. <u>99-200</u> /

To: The Commission

AIRTOUCH COMMUNICATIONS, INC. COMMENTS

AirTouch Communications, Inc. ("AirTouch") hereby submits comments in response to the Bureau's Public Notice¹ inviting comments on the petition filed by the Public Utilities Commission of Ohio ("PUCO") for additional delegated authority to implement area code and number conservation measures. As discussed herein, the Commission should not act on this petition until it has completed action on its pending *Numbering Resource Optimization* rule-

¹Public Notice, *Common Carrier Bureau Seeks Comment on the Ohio Public Utilities Commission's Petition for Delegation of Additional Authority to Implement Number Conservation Measures*, DA 99-2016 (CCB, September 29, 1999).

making.² If the Commission nevertheless acts, it should deny the petition. The requested relief is not warranted, and particularly not at this time.

I. ACTION ON THE PETITION SHOULD BE DEFERRED UNTIL COMPLETION OF THE *NRO* RULEMAKING

Given the nationwide dimensions of the number crisis, the Commission needs to address it on a national scale -- as soon as possible. This can only be achieved by making completion of the *NRO* rulemaking the Commission's *top priority* in the numbering area. The Commission should not continually divert its staff from completion of the rulemaking to address one state petition after another. PUCO does not claim that emergency conditions make it unable to wait a few months for completion of the rulemaking; rather, PUCO simply wants to work to forestall impending number exhaust, even before the new rules have been written. Under the circumstances, the Commission's subject-matter experts should not divert their attention from the national numbering crisis to address the PUCO filing. This alone would justify deferring action on the PUCO petition.

An additional reason for deferring action is that premature grant of the petition could prejudice the *NRO* rulemaking. Many of the issues that the Commission is addressing in the rulemaking concern whether, and within what limits, to delegate additional authority to state commissions. Granting PUCO additional authority now may limit the Commission's flexibility to select the best approaches in the rulemaking to avoid disrupting measures undertaken in Ohio, or in other states where interim delegated authority has previously been granted. Moreover,

²*Numbering Resource Optimization*, CC Docket No. 99-200, *Notice of Proposed Rulemaking*, FCC 99-122 (June 2, 1999) (*NRO NPRM*).

PUCO agrees that national guidelines are preferable to proceeding state by state, and acknowledges that “any Ohio measures may have to be modified as national guidelines are developed.”³

Expanding particular states’ authority to deviate from established national norms and procedures at the very time the Commission is trying to come up with a comprehensive *federal* plan for number resource optimization *and determine the appropriate role for states* would undermine the Commission’s ability to do just that. While there may be a role for expanded state authority with respect to some of these issues, that is a matter which should not be prejudged. For similar reasons the Commission disfavors waivers of its rules while those policies and rules are being debated in a rulemaking, since such waivers can prejudice the outcome of the rulemaking.⁴

Moreover, most of the measures for which PUCO seeks authority will require months of investigation, planning, and public proceedings before implementation. No additional delegation of authority is needed to undertake these preparatory efforts, and the Commission should encourage PUCO to do so, pending the Commission’s *NRO* decision. Nothing is gained by granting PUCO delegated authority for only a few months, pending that decision.

II. IF NOT DEFERRED, THE PETITION SHOULD BE DENIED

A. Establishment and Enforcement of Number Allocation Standards and Reclamation of NXX Codes and Thousands Blocks

PUCO has asked for authority to enforce the existing requirements for number allocations and to set and enforce additional standards of its own, as well as to order the return of certain

³Petition at 4.

⁴*See, e.g., Granite Broadcasting Corp.*, 13 F.C.C.R. 13,035, 13,038 (1998); *RKO General, Inc.*, 3 F.C.C.R. 5262, 5263 (1988); *accord Commission Requirements for Cost Support Material*, 8 F.C.C.R. 2306 ¶ 5 (CCB 1993).

unused codes. These requests should be denied. At a minimum, the requests cannot be granted in their current broad form, but must be more narrowly limited.

PUCO claims that these delegations of authority are needed because the North American Numbering Plan Administrator (“NANPA”) “has little or no authority to enforce” the NXX code allocation guidelines.⁵ In particular, PUCO seeks to enforce standards such as the requirements that companies requesting codes “be certified to provide service in the area” and have a months-to-exhaust report demonstrating “a forecasted need for the new NXX.”⁶ There is no need to grant PUCO this authority, however. NANPA already has the ability and authority to determine that these standards are satisfied before it issues an NXX code. AirTouch has urged the Commission, in the *NRO* rulemaking, to clarify that NANPA is responsible for evaluating these submissions and to deny codes to requesters not in compliance.⁷ There is no need to involve state regulators in this process.

PUCO does not seek only narrowly focused enforcement authority, however; it asks for authority to enforce *all* of the guidelines and requirements regarding to code assignment. The Commission has been justifiably reluctant to grant states such open-ended enforcement authority. In *New York State Department of Public Service*, the Commission considered a request for “authority to enforce compliance with number assignment requirements and conservation measures” that was similarly open-ended.⁸ It found there that because it had granted certain limited, specific delegations of authority — regarding number reclamation and submission of

⁵Petition at 4.

⁶*Id.* at 5.

⁷AirTouch Comments, CC Docket 99-200, at 18-19 (filed July 30, 1999).

⁸FCC 99-247, ¶31 (Sept. 15, 1999).

utilization reports — the broad delegation sought was unnecessary, and suggested that the state come back with more specific requests later, if it believed greater enforcement power was needed.⁹

The open-ended nature of PUCO's request, by contrast, would grant it enforcement authority over anything contained in the CO assignment guidelines. This cannot be reconciled with the Commission's narrow approach. For the same reason, the Commission should deny PUCO's open-ended request for "broader authority . . ."¹⁰ relating to code assignment. The broad delegation PUCO seeks is completely unjustified.

In several recent decisions, the Commission has permitted states to engage in the following enforcement activities:

- ***Ability to activate service within six months:*** One state was authorized to "require a carrier to demonstrate that it will have the necessary facilities to serve a specific rate center within six months of assignment of an NXX code for use in that rate center."¹¹
- ***Fill rates:*** States have been authorized to "require NXX code applicants to demonstrate that they have met certain fill rates in previously assigned NXX codes prior to obtaining additional numbering resources, even if the NPA is not in jeopardy,"¹² in accordance with FCC-prescribed procedures and guidelines.¹³

⁹*Id.* In addition, the Order also refused to grant a broad delegation of authority to "tighten the timeframes for reclamation without a more detailed proposal for what the new timeframes would be or how shorter timeframes would assure equitable access to numbering resources." *Id.* at ¶ 23.

¹⁰Petition at 5.

¹¹*Maine Public Utilities Commission*, FCC 99-260, at ¶ 11 (Sept. 28, 1999).

¹²*Maine PUC*, FCC 99-260 at ¶ 12; *accord NYPSC*, FCC 99-247 at ¶ 25; *Massachusetts Department of Telecommunications and Energy*, FCC 99-246 at ¶ 31 (Sept. 15, 1999); *California Public Utilities Commission*, FCC 99-248 at ¶ 25 (Sept. 15, 1999); *Florida Public Service Commission*, FCC 99-249 at ¶ 29 (Sept. 15, 1999).

¹³*Maine PUC*, FCC 99-260 at ¶¶ 12-16; *accord NYPSC*, FCC 99-247 at ¶¶ 28-30; *Massachusetts DTE*, FCC 99-246 at ¶¶ 35-36; *CPUC*, FCC 99-248 at ¶¶ 29-30; *Florida PSC*, FCC

- **Enforcement of COCUS reporting requirement:** A state has been authorized to require submission of completed COCUS reports to NANPA and to “direct NANPA to suspend the assignment of NXX codes to a carrier if that carrier has not complied,”¹⁴ but the Commission has refused to grant a state request for authority to impose more extensive reporting requirements.¹⁵
- **Auditing carrier utilization reports.** States have been authorized to “audit carriers’ number utilization reporting . . . to verify carrier compliance with the CO Code Assignment Guidelines and with the fill rates it seeks to establish.”¹⁶
- **Code Reclamation.** States have been authorized to require proof from carriers that NXX codes have been “‘placed in service’ according to the CO Code Assignment Guidelines,” that carriers are certified in the specified service area, and that facilities have been established within the specified time frame; and to direct NANPA to reclaim NXXs the state determines have not been activated in a timely manner.¹⁷ One state was also authorized to reclaim test codes that it determines are not warranted, but only if that would not disrupt the carrier’s operations.¹⁸ States have been authorized to deviate from the procedures in the Guidelines for reclamation, provided the carrier is given a prior opportunity to be heard.¹⁹

99-249 at ¶¶ 33-34.

¹⁴*Maine PUC*, FCC 99-260 at ¶ 22.

¹⁵*Florida PSC*, FCC 99-249 at ¶ 35 (denying request that the state be allowed to use the Line Number Utilization Survey (“LINUS”) to generate code reports quarterly, that NANPA update the COCUS quarterly, and that wireless carriers be required to provide utilization data at the thousands-block level).

¹⁶*Maine PUC*, FCC 99-260 at ¶ 23; *accord NYPSC*, FCC 99-247 at ¶ 35 (for determining need for growth codes only); *CPUC*, FCC 99-248 at ¶ 25 (in connection with fill rates only); *Florida PSC*, FCC 99-249 at ¶ 36 (in connection with planning area code relief and determining feasibility of number pooling only).

¹⁷*Maine PUC*, FCC 99-260 at ¶ 19; *accord NYPSC*, FCC 99-247 at ¶ 22; ; *Massachusetts DTE*, FCC 99-246 at ¶ 23; *CPUC*, FCC 99-248 at ¶ 34; *Florida PSC*, FCC 99-249 at ¶ 22. In addition, the Commission has authorized states to reclaim unused partial NXX codes in connection with number pooling. See *NYPSC*, FCC 99-247 at ¶ 24; *Massachusetts DTE*, FCC 99-246 at ¶ 26; *CPUC*, FCC 99-248 at ¶ 36; *Florida PSC*, FCC 99-249 at ¶ 24.

¹⁸*Maine PUC*, FCC 99-260 at ¶ 21.

¹⁹*Maine PUC*, FCC 99-260 at ¶ 21; *accord NYPSC*, FCC 99-247 at ¶ 23; ; *Massachusetts DTE*, FCC 99-246 at ¶ 24; *CPUC*, FCC 99-248 at ¶ 35; *Florida PSC*, FCC 99-249 at ¶ 23.

While the advisability of these actions can be debated, as the foregoing summary makes clear, the Commission's previous delegations of additional authority have been narrowly defined. The Commission has been unwilling to grant a broad delegation of enforcement authority such as that sought by PUCO.

Moreover, PUCO's request for authority concerning code reclamation goes well beyond what the Commission has previously authorized. The Commission has only given states delegated authority to investigate whether numbers have been "'placed in service' according to the CO Code Assignment Guidelines" and to order NANPA to reclaim codes and thousands-blocks that have not been timely placed in service.²⁰ Accordingly, any delegation of authority to PUCO must be similarly limited.

No delegation of authority is needed, however, for returning "protected" NXX codes to unprotected status and making them available for assignment. Protected codes are made unavailable for assignment when a *state* wishes to preserve seven-digit local dialing across NPA boundaries.²¹ They are not set aside for a given service provider, but are simply made unavailable to all providers. Thus, the "reclamation" of protected codes should not ordinarily entail taking such codes out of the inventory of a service provider pursuant to the CO Code Assignment Guidelines. Instead, it simply requires the state to determine that the code should no longer be protected. PUCO has the authority it needs to recategorize a protected code as available for assignment. AirTouch supports the reclamation of protected codes, particularly as part of a move toward ten-digit dialing, which eliminates any justification for protected codes.

²⁰See, e.g., *Maine PUC*, FCC 99-260 at ¶ 19.

²¹See *NRO NPRM* at ¶ 122.

B. Authority to Order “Efficient Number Use Practices” Within NXX Codes

While PUCO titled this request for authority broadly, in terms of ordering “efficient use practices,” it actually seeks “authority to order sequential use of numbers within an NXX or thousand block” in order to preserve intact blocks of numbers for eventual pooling.²² The Commission has previously granted authority to require sequential number assignment in its *CPUC* decision, but emphasized that the state should accommodate carriers’ need for flexibility to meet customer requirements.²³ Thus, any grant in this area should be no broader than that contained in the *CPUC* decision.

C. Additional Rationing Measures

PUCO requests authority to order rationing “if an area code *nears* a jeopardy situation,” thus implementing rationing earlier than under the existing guidelines “in an attempt to help delay the need for area code relief.”²⁴ This request must be denied. In prior decisions, the Commission has denied requests for similar authority. In the Massachusetts DTE and Florida PSC decisions, the Commission made its policy clear: “As determined in the *Pennsylvania Numbering Order*, state commissions may not use rationing as a substitute for area code relief.”²⁵ The *NYPSC* decision elaborates the rationale further:

[W]e decline to grant the New York Commission the broad authority it seeks to adopt rationing measures prior to having decided on a specific plan for area code relief. As determined in the *Pennsyl-*

²²Petition at 6.

²³*CPUC*, FCC 99-248 at ¶ 31.

²⁴Petition at 6.

²⁵*Florida PSC* at ¶ 39, citing *Pennsylvania Public Utilities Commission*, 13 F.C.C.R. 19,009, 19,026-27 (1998); *Massachusetts DTE* at ¶ 41.

vania Numbering Order, the rationing of NXX codes should only occur when it is clear that an NPA will run out of NXX codes before implementation of a relief plan. Therefore, we delegated authority to state commissions to order NXX code rationing in conjunction with area code relief decisions, if the industry had been unable to reach consensus on a rationing plan to extend the life of an area code until implementation of relief.²⁶

Since PUCO seeks authority to order early rationing specifically to avoid area code relief, its request is flatly inconsistent with Commission precedent. Accordingly, this authority cannot be granted.

D. Number Pooling Where and When PUCO Determines It to Be Appropriate

PUCO's request for authority to implement number pooling contains no details and seeks authority to order any kind of number pooling in any area where PUCO decides that it "passes an appropriate benefit/cost analysis."²⁷ This request should be denied. No specific proposal or plan has been put forward for consideration. The Commission has made clear that it will grant authority only for thousands-block pooling for LNP-capable carriers at this point, that any implementation will require the establishment of an effective backup NPA relief measure, and that non-LNP-capable carriers "shall continue to be able to obtain full NXX codes."²⁸

²⁶*NYPSC* at ¶ 32 (footnotes omitted); *accord Florida PSC* at ¶ 39; *Massachusetts DTE* at ¶ 41.

²⁷Petition at 6.

²⁸*Maine PUC* at ¶¶ 32-33; *NYPSC* at ¶¶ 14-15; *Massachusetts DTE* at ¶¶ 15-16; *CPUC* at ¶ 15-16; *Florida PSC* at ¶¶ 14-15.

E. Service- or Technology- Specific Overlays

PUCO's request for authority to implement service- or technology-specific overlays must be denied. The Commission clearly set forth its reasoning for banning such area code overlays in 1996:

[W]e conclude that any overlay that would segregate only particular types of telecommunications services or particular types of telecommunications technologies in discrete area codes would be unreasonably discriminatory and would unduly inhibit competition. We therefore clarify the *Ameritech Order* by explicitly prohibiting all service-specific or technology-specific area code overlays because every service-specific or technology-specific overlay plan would exclude certain carriers or services from the existing area code and segregate them in a new area code. Among other things, the implementation of a service or technology specific overlay requires that only existing customers of, or customers changing to, that service or technology change their numbers. Exclusion and segregation were specific elements of Ameritech's proposed plan, each of which the Commission held violated the Communications Act of 1934.²⁹

The Commission further held:

Service-specific and technology-specific overlays do not further the federal policy objectives of the NANP. They hinder entry into the telecommunications marketplace by failing to make numbering resources available on an efficient, timely basis to telecommunications services providers. * * * [S]ervice-specific overlays would provide particular industry segments and groups of consumers an unfair advantage. We have also stated that administration of the NANP should be technology neutral; service-specific overlays that deny particular carriers access to numbering resources because are not technology neutral.³⁰

Under the Commission's established policy, codified in 47 C.F.R. § 52.19(c)(3), only all-services overlay codes are permitted. PUCO has shown no reason why Ohio should be treated differently

²⁹*Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, *Second Report and Order and Memorandum Opinion and Order*, 11 F.C.C.R. 19392 at ¶ 285 (1996) (*Second Local Competition Order*).

³⁰*Second Local Competition Order* at ¶ 305.

from all other states in this regard. Indeed, one of the subjects being addressed in the *NRO NPRM* is whether the ban on service- and technology-specific overlays should be revisited.

The Commission has recognized in the *NPRM* that such overlays “raise serious competitive issues.”³¹ The competitive issues raised are indeed serious. Indeed, PUCO acknowledges that the reason such overlays have not been authorized is a concern that the carriers placed in them will be placed at a competitive disadvantage.³² However, PUCO argues that this will not be the case, based on a survey of customers concerning their perception of wireless services with or without a wireless-only overlay.³³ AirTouch submits that this informal survey in fact substantiates the competitive disadvantage, in that a significant number of wireless customers and potential customers view a wireless-only overlay negatively.

A separate area code for all wireless numbers was deemed unacceptable by 18.6% to 35.3% of the residential respondents and 15.2% to 31.7% of the business respondents; it mattered little whether the respondents were already wireless subscribers.³⁴ Thus, a large number of respondents found the proposal to be unacceptable. Under these circumstances, it is clear that the deployment of a wireless-only overlay, and the movement of all wireless carriers to that overlay, would have a significant detrimental effect on consumers’ willingness to use wireless services. The PUCO request for service- and technology-specific overlays should be denied.

³¹*NRO NPRM* at ¶ 257.

³²Petition at 7.

³³Petition at 7; *id.*, Attachment, “Area Code Relief Survey Report,” prepared by the PUCO staff, dated August 30, 1999.

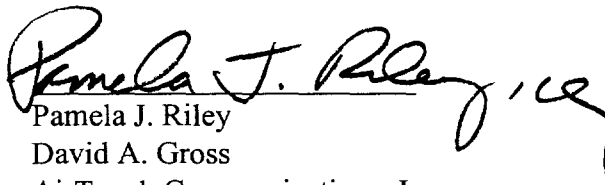
³⁴*See* Petition, Appendix at 24.

CONCLUSION

For the foregoing reasons, the PUCO petition should be deferred until completion of the *NRO* rulemaking, or, in the alternative, denied.

Respectfully submitted,

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SUMMARY

The number crisis is a nationwide problem that should be addressed on a nationwide basis by making completion of the *NRO* proceeding the Commission's top priority. The Public Utilities Commission of Ohio ("PUCO") petition unjustifiably diverts Commission attention from this task. Moreover, many of the measures PUCO proposes are currently at issue in the *NRO* proceeding, and granting the PUCO additional authority risks prejudging the outcome of that proceeding.

If the Commission does not defer its consideration of the Petition, the Commission should deny it outright or limit its scope consistent with limits imposed on similar petitions.

- PUCO should be denied authority to establish and enforce number allocation standards and code reclamation. NANPA already has authority to determine whether carriers are authorized to provide service in an area and require a months-to-exhaust report, and a role for state regulators is unnecessary. At minimum, the Commission should limit PUCO's enforcement activities consistent with the limited authority granted to other state commissions. Moreover, PUCO needs no additional authority to return "protected" NXX codes to unprotected status and make them available for assignment.
- PUCO's request for authority to impose "efficient use practices" is also overbroad; at most it should be limited to the sequential number assignment authority previously granted to the California PUC.
- PUCO's request for authority to order rationing if an area code nears a jeopardy situation should also be rejected. The Commission has previously denied state commissions authority to use rationing as a substitute for area code relief and this authority cannot be granted.
- PUCO's request for broad authority to impose number pooling should be denied. At most, any authority granted should be only for thousands-block pooling for LNP-capable carriers, with sufficient backup NPA relief measures. Non-LNP-capable carriers must continue to be able to obtain full NXX codes.
- Finally, PUCO's request for authority to implement service-or technology-specific overlays must be denied. This request contravenes the Commission's rules and PUCO has failed to demonstrate why it should be treated differently from other states. Moreover, this measure also is at issue in the *NRO* proceeding. Furthermore, PUCO's own surveys substantiates the competitive disadvantage a service-specific overlay will have for wireless carriers.

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